



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 23, 1996

Mr. Banker Phares  
Attorney and Counselor at Law  
2933 Park Place Plaza  
Port Arthur, Texas 77642

OR96-0784

Dear Mr. Banker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39172.

The Port Arthur Independent School District (the "district"), which you represent, received a request for "the Growth Plan of Patricia Jones, a teacher at Stephen F. Austin." You have identified three memoranda that are responsive to the request and have submitted copies of those memoranda to this office for our review. You claim that these memoranda are excepted from disclosure under section 552.102 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Seventy-fourth legislature enacted Senate Bill 1, which added section 21.355 to the Education Code. Section 21.355 provides, "Any document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). We enclose a copy of Open Records Decision No. 643 (1996) for your information. In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the memorandum dated October 18, 1995 is confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the district must withhold this memorandum.

However, the memoranda dated October 25, 1995 and November 17, 1995 do not evaluate the teacher's performance; rather they instruct her to attend workshops. These memoranda are not confidential under section 21.355 of the Education Code. Therefore, we must address your contention that these memoranda are excepted from disclosure under section 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if:

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

*Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). These memoranda do not contain the type of information that common-law privacy protects. Accordingly, the district must release the October 25, 1995 and November 17, 1995 memoranda to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 39172

Enclosures: Open Records Decision No. 643 (1996)  
Submitted documents

cc: Ms Leisha Smith  
2820 62nd Street  
Port Arthur, Texas 77640  
(w/enclosure - Open Records Decision No. 643 (1996))